

APPENDIX D

PROCEDURES OF SOVEREIGN LAND MANAGEMENT



**Final Draft
February 26, 2009**

**of the
Utah Lake Commission**



1.0 SOVEREIGN LAND MANAGEMENT

Utah Statute R-652-2 authorizes the FFSL to prescribe the general land management objectives for sovereign lands. Since statehood, the State of Utah has recognized and declared that the bed of Utah Lake within the State of Utah is owned by the State and is among the basic resources of the State, and that there exists a public trust over and upon the bed of Utah Lake. The State of Utah also recognizes that the public health, interest, safety, and welfare require that all uses on, beneath, or above the bed of Utah Lake are regulated so that the protection of navigation, fish and wildlife habitat, aquatic beauty, public recreation, and water quality will be given due consideration and balanced against the navigational or economic necessity or justification for, or benefit to be derived from, any proposed use of sovereign lands.

Utah Statute R-652-70 provides for the issuance of special use leases, general permits, and easements on sovereign lands, as well as the procedures and fees necessary in order to regulate and manage these rights of use. Existing leases and permits at Utah Lake include forty-eight easements, two rights of entry, five general permits, and five special use lease agreements. See Table 1.1 – Existing Leases/Easement on Utah Lake at the end of this appendix.

Grazing permits and mineral leases are considered separately under the range resource management rules and the mineral lease rules, respectively. Any lease, permit, or easement issued by the FFSL on sovereign lands is subject to public trust and may be revoked at any time if necessary to fulfill public trust responsibilities. The following describes the types of leases, permits, and easements that may occur at Utah Lake, as well as relevant information on procedures, applications, rates, approvals, and other requirements.

1.1 Types of Uses

Special Use Leases: The FFSL may issue Special Use Leases for terms of one to 51 years for surface uses on sovereign lands under the following criteria:

- Commercial: Income producing uses such as marinas, recreation piers or facilities, docks, moorings, restaurants, or gas service facilities.
- Industrial: Uses such as oil terminals, piers, wharves, moorings.
- Agricultural/Aquacultural: Any use which utilizes the bed of a navigable lake or stream to grow or harvest any plant or animal.
- Private Uses: Non-income producing uses such as piers, buoys, boathouses, docks, water-ski facilities, houseboats, and moorings that do not qualify for a General Permit.

General Permits: The FFSL may issue General Permits for terms of one to 30 years for surface uses on sovereign lands under the following criteria:

- Public agency uses such as public roads, bridges, recreation areas, or wildlife refuges having a statewide public benefit.
- Public agency protective structures such as dikes, breakwaters, and flood control workings.

- Private recreational uses such as any facility for the launching, docking, or mooring of boats, which is constructed for the use of the adjacent upland owner. An adjacent upland owner is defined as any person who owns adjacent upland property, which is improved with, and used solely for, a single-family dwelling.

Easements: Easement terms and conditions shall be prescribed in the particular easement document. Applications for easements not meeting the criteria for Special Use Leases or General Permits shall follow the rules and procedures outlined in the FFSL's rules governing the issuance of easements.

1.2 Procedures

Leases, Permits, and Easements: Procedures for processing individual applications for special use lease agreements, easements, grazing permits, materials permits, off-highway designations, land exchanges, and cultural resources will be:

1. Application is received in FFSL offices and application fees will be collected.
2. Application will be evaluated to check compliance with the Utah Lake Master Plan and Comprehensive Management Plan.
3. If application conforms to the Master Plan, then the proposed plan will be sent to the Resource Development Coordinating Committee for a 30-day review period. This is the time the public can provide input on individual applications, as well as agency comments to the project, including any suggested stipulations that may restrict timing or development of the proposed project. Following the review period, the Governor's Office of Planning and Budget will forward comment to the submitting office.
4. Simultaneous to the RDCC review, copies will be sent to the Utah Lake Commission for review. The Executive Director will evaluate the project and make a determination on whether a committee review, governing board review, or other type of review is warranted.
5. Simultaneous to the RDCC review and the Utah Lake Commission review, a copy of the proposed action will be sent to the Mountainland Area of Governments for input and comment.
6. Copies of the planned actions will be sent to adjacent landowners for all actions requiring a Record of Decision. (Rights of Entries and Letters of Authorization require no public review).
7. A decision document will be prepared either in the form of a Director's Agenda (a short factual review of the decision process) or a Record of Decision (an analysis of the proposed action and the effects to the resources, adjacent landowners, and economic benefit to the trust beneficiaries).

8. The Record of Decision, or Director's Agenda item will be executed (or disapproved).
9. If the application is approved, legal documents outlining terms and conditions of the approved action will then be negotiated between the parties, prepared and executed.

Rights of Entry: Rights of Entry, because they are temporary in nature (usually maximum of one year) and normally do not affect surface features of the sovereign lands, are issued at the area level under the Area Manager's signature. The process for Rights of Entry:

1. Application is received in FFSL offices and application fees will be collected.
2. Application will be evaluated to check compliance with the Utah Lake Master Plan.
3. If the use complies with the Master Plan, then a permit will be written outlining terms and conditions of the approved action, then executed.
4. A Director's Agenda will be prepared to update the land lease system.

Letters of Authorization: Letters of Authorization (LOA), also executed at the area level, do not normally involve any money being made on sovereign lands. These uses are generally educational or research-oriented and are free to obtain although the verbiage in the letter tries to limit the exposure to the state to mishaps (E.g. if a four wheeler falls into a rut and is damaged, the state would not be liable.). The procedure is as follows:

1. If the use complies with the Master Plan, then a letter will be written outlining terms and conditions of the approved action, then executed. No fees are associated with a LOA.
2. A Director's Agenda will be prepared to update the land lease system.

1.3 Applications

Any person who is qualified to do business in the State of Utah, and is not in default under the laws of the State of Utah or in default on any previous agreements with FFSL, is qualified to apply for a lease, permit, or easement on sovereign lands at Utah Lake. Application shall be on forms provided by FFSL and must be accompanied by plans which include references to the relationship of the proposed use to various water surface elevations and the high water mark* at Utah Lake and the vicinity at the site of the proposed use. The application must also include a description of the proposal's relationship to the classification system found in the Master Plan (see Figure 2.4, pg 16 of the Master Plan).

1.4 Rates

Special Use Lease Rates: Procedures for determining fair market value for surface leases are found in Utah Administrative Rules R652-30-400. Where these general procedures cannot be readily applied, fair market value for sovereign lands may also be determined by multiplying the market value (as

determined by the County Assessor or by the State Tax Commission) of the adjacent upland by 30 percent. Lease rates for sovereign lands may also be determined by multiplying the fair market value by the current determined interest rate and then prorating that amount by a season of use adjustment as determined by FFSL. Regardless of the lease rate determined as above, no Special Use Lease shall be issued for an amount less than the minimum lease rate as determined by FFSL.

General Permit Rates: Procedures for establishing rental rates for any private recreational use of sovereign land are found in R652-70-300. The adjacent upland owner shall also pay the FFSL's expenses in issuing a General Permit in accordance with its current fee schedule. No application fee shall be charged for public agency use of sovereign lands if the FFSL Director determines that the agency use enhances public use and enjoyment of sovereign land. In addition, no rental shall be charged for public agency use of sovereign lands if the FFSL Director determines that a commensurate public benefit accrues from the use.

The FFSL Director may enter into agreements with State agencies having regulatory authority on navigable lakes and rivers to allow these agencies to authorize public agency use of sovereign land provided the following are met:

- The use is consistent with the Master Plan and FFSL policies and coordinated with other FFSL activities;
- The applicant has an existing General Permit in good standing; under which the proposed use can be placed pursuant to R652-70-700(3);
- A commensurate public benefit accrues from the use, as indicated by criteria provided in the agreement;
- The proposed use meets the criteria required by the State agency; and
- The proposed use is consistent with the principles of multiple use and sustained yield as defined in Section 65A-1-1.

1.5 Approvals

Nothing in the FFSL rules excuses an applicant for Special Use Lease, General Permit, or Easement from obtaining any additional approvals lawfully required by any local, State, or Federal agency, including local zoning boards or any other local regulatory entity, the Division of Parks and Recreation, the State Engineer, the Division of Oil, Gas, and Mining, the United States Army Corps of Engineers, or the United States Coast Guard. The following are examples of specific activities that require approval for uses of sovereign lands and their associated guidelines:

Placing of Dredged or Fill Material: The placing of dredged or fill material, refuse, or waste material on the bed of Utah Lake requires written approval from FFSL and the U.S. Army Corps of Engineers.

Excavated or Dredged Channels and Basins: Excavated or dredged channels or basins will only be authorized by the FFSL Director on a showing of reasonable necessity. Material moved during excavation or dredging shall be transported

and deposited at a point above the high water mark* of Utah Lake. Additional conditions may be stipulated in the permit.

Repair of Existing Facilities: Approval is not required by FFSL to clean, maintain, or to make repairs to existing facilities authorized by a permit or lease in good standing. Approval is required to replace, enlarge, or extend existing facilities, or for any activity which would disturb the surface of the bed of Utah Lake or which would cause any rock or sediment to enter Utah Lake.

Docks, Piers, and Similar Structures: All docks, piers, or similar structures shall be constructed to protrude as nearly as possible at right angles to the shoreline and to not interfere with docks, piers, or similar structures presently existing or likely to be installed to serve adjacent facilities. The structures may extend to a length that will provide access to a water depth that will afford sufficient draft for water craft customarily in use on Utah Lake during the normal low water period.

Retaining Walls and Bulkheads: Retaining walls and bulkheads will not be authorized below the ordinary high water mark* without a showing of extraordinary need.

Breakwaters and Jetties: Breakwaters and jetties will not be authorized below the normal low water mark* without a showing of extraordinary need. This does not apply to floating breakwaters secured by piling or other approved anchoring devices and used to protect private property from recurring wind, wave, or ice damage. The FFSL Director may approve streambank stabilization practices concurrently with the issuance of streambed alteration permits issued by the Division of Water Rights if it is determined that the proposed practice is consistent with public trust management.

Camping and Motor Vehicles: The FFSL may restrict camping on lands lying between the low water mark* and the ordinary high water mark* at Utah Lake. Motor vehicles are prohibited from driving or parking on sovereign lands at all times, except for those areas supervised by the Division of Parks and Recreation or other enforcement entity that are posted as open to vehicle use according to current rules at Utah Lake.

Overhead Clearances: Overhead clearance between the ordinary high water mark* and any structure, pipeline, or transmission line must be sufficient to pass the largest vessel which may reasonably be anticipated to use Utah Lake waters in the vicinity of the easement.

* As determined by the U.S. Army Corps of Engineers

Table 1.1 – Existing Leases/Easements on Utah Lake

Id	Type	FFSL Number	Lessee	Purpose
1	Easement	400-00146	City of Saratoga Springs	Stormwater Outfall
2	Easement	400-00135	Pacificorp	Transmission Power Line
3	Easement	400-00141	City of Saratoga Springs	Water Line
4	Easement	400-00049	Eagle Mountain Town	Sewer Line
5	Easement	400-00093	Saratoga Springs Development	Sewer Line
6	Easement	400-00041	Lake Mountain Mutual Water Company	Pipeline
7	General Permit	720-00038	Utah County Public Works	Pedestrian Trail and Park
8	Grazing Permit	500-00007	Kent Bladen	Grazing
9	General Permit	720-00024	American Fork City	Harbor
10	Special Use Lease	SULA 852	Timp Marina Club	Harbor
11	Special Use Lease	300-00001	Mark Cook	Harbor
12	Easement	SOV 0001-400	Geneva Steel LLC	Diffuser Pipeline
13	Special Use Lease	SULA 897	Anderson Geneva LLC	Retention Pond
14	General Permit	720-00046	Utah County Public Works	Jordan River Parkway Trail
15	Easement	ROW 1639	Utah Power & Light	Distribution Line
16	Easement	400-00167	Homesteads Acquisition	Storm and Land Drainage
17	General Permit	700-00005	Division of Parks and Recreation	State Park & Harbor
18	Easement	ROW 62	Provo City	Road, Permanent Earth Pier
19	General Permit	720-00013	Provo City Corporation	Airport
20	Special Use Lease	300-00037	Jeff Stubs	Agriculture
21	Easement	400-00007	Utah Department of Transportation	Public Road on State Land
22	General Permit	700-00001	Division of Wildlife Resources	Road & Parking
23	General Permit	SLGP 0013	Utah County Public Works	Harbor
24	Grazing Permit	GP 22874	Lawrence Lavery	Grazing
25	Easement	ESMT 140	Farm Management Co.	Intake Canal
26	Easement	400-00014	Dyno Nobel Inc	Road & Pumphouse
27	General Permit	720-00045	City of Saratoga Springs	Harbor
28	Special Use Lease	300-00012	El Nautica Boat Club	Harbor
29	Special Use Lease	300-00044	Saratoga Springs Owners Association	Harbor
30	Easement	400-00064	Saratoga Springs Development	Pool & Spring Drainage
31	General Permit	720-00037	Utah County Public Works	Park
32	General Permit	700-00009	Division of Wildlife Resources	Hobble Creek Restoration Proj